The provisions as to police supervision in the Criminal Procedure Code of the former Straits Settlements (S.S. Cap. 21) are contained in section 12. Nowhere in section 12 do there appear provisions in any way equivalent to the provisions of subsection (ii) of section 295 of the F.M.S. Criminal Procedure Code. The learned Deputy Public Prosecutor was not able to draw my attention to any other provisions of any other law which have an effect similar to that of this subsection (ii). He did submit, but without a great deal of confidence, that section 5 of the S.S. Criminal Procedure Code might assist. This section reads as follows:—

"5. As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force in the States the law relating to criminal procedure for the time being in force in England shall be applied so far as the same does not conflict or is not inconsistent with this Code and can be made auxiliary thereto."

In my opinion, however, section 5 is of no assistance, because it does not say that the law relating to criminal procedure in the F.M.S. Criminal Procedure Code shall be applicable where there is no special provision in the S.S. Criminal Procedure Code. It says that where there is no special provision in the S.S. Criminal Procedure Code the law relating to criminal procedure for the time being in force in England shall be applicable. However, the learned Deputy Public Prosecutor was not able to draw my attention to any legislation in England which permitted any Court to make an Order for police supervision or anything equivalent thereto.

Reference to the Criminal Procedure Code at present in force in Singapore shows that in section 15 there is a subsection (3) which corresponds with subsection (ii) of section 295 of the F.M.S. Criminal Procedure Code. In *Mallal's Criminal Procedure*, 4th edition, the footnote to section 15 states that formerly if a person subject to the supervision of the Police was subsequently imprisoned the period of supervision continued to run during imprisonment. This was undesirable particularly when the subsequent offence was one in respect of which supervision could not be ordered. Subsection (3) therefore was enacted to provide that such period of imprisonment should be excluded from computation of the period of police supervision.

I am of the opinion therefore that in Penang, where the S.S. Criminal Procedure Code applies, where a person is subsequently imprisoned during the course of a term of police supervision the period of police supervision continues to run during the imprisonment.

The learned Deputy Public Prosecutor conceded in the present case that, if this is so, the period of police supervision relating to the offence charged had expired prior to the date upon which such offence was alleged to have been committed. This being so I dismissed the appeal and quashed the conviction and sentence.

I should make it clear however that I am in complete agreement with the learned Deputy Public Prosecutor that where a police supervisee fails without any or any adequate excuse to report at the appropriate time and place and is properly convicted of an offence to that effect a sentence of one day's imprisonment is manifestly inadequate. The supervisee would never bother to report if he knew that the punishment which he was likely to receive for failing to do so would be no more than one day's imprisonment.

Appeal dismissed. Conviction and sentence quashed.

LEE SAI CHEONG v. WAN LIM CHEONG

[C.A. (Thomson C.J., Hill and Good JJ.A.) April 9, 1962]

[Ipoh — F.M. Civil Appeal No. 21 of 1961]

Damages — Fatal accident — Loss of expectation of life and of services — Civil Law Ordinance, 1956, ss.7 and 8.

The plaintiff (respondent in this appeal) is the father and the administrator of the estate of the deceased who was killed in an accident which was due to the defendant's negligence. The plaintiff claimed special damages under section 8 of the Civil Law Ordinance for loss of expectation of life and damages under section 7 for loss of services and special damages. Azmi J. awarded $783 as special damages, $5,000 for loss of expectation of life and dismissed the claim for damages for loss of services. The defendant (appellant in this appeal) appealed on the ground that the damages awarded under section 8 were excessive and the plaintiff cross-appealed against the trial judge's decision with respect to damages for loss of services.

Held: (1) as the plaintiff had not suffered any pecuniary loss, he was not entitled to damages for loss of services under section 7 of the said Ordinance;

(2) in awarding damages under section 8 the balance to be struck in such cases cannot be left to be decided by the exercise of judicial discretion in the ordinary way. The only answer lies in some sort of judicial legislation and bearing in mind the insuperable difficulties, the conventional figure for this country at this present time in the case of a young adult should be $3,000 and that view should be accepted by judges.

Cases referred to:—

(1) *Bishop* v. *Cunard White Star Co. Ltd.* [1950] P. 240.
(2) *Davies* v. *Powell Duffryn Associated Collieries Ltd.*, [1942] A.C. 601, 617.
(3) *Benham* v. *Gambling* [1941] A.C. 157.
(4) *Flint* v. *Lovell* [1935] 1 K.B. 354.
(5) *Rose* v. *Ford* [1937] A.C. 826.
(6) *Shepherd* v. *Hunter* [1938] 2 All E.R. 587.
(7) *Wise* v. *Kaye* [1962] 2 W.L.R. 96.

COURT OF APPEAL.

J. D. Donnelly for the appellant.

S. A. Raj for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This is an appeal from a decision of Azmi J.

The plaintiff is the father and the administrator of the estate of one Wan Thai Thong who was killed on 2nd August, 1957, in an accident

to a motor car in which he was a passenger and which was driven by the defendant. It was averred and admitted that the accident was due to the defendant's negligence. In the circumstances the only question to be decided in the present proceedings was the quantum of damages.

The plaintiff claimed special damages, damages under section 8 of the Civil Law Ordinance for the deceased's loss of expectation of life and damages under section 7 of the Ordinance for loss of services. In the event Azmi J. awarded damages as follows:—

Special damages	$ 783
Damages for loss of expectation of life	$5,000
Damages for loss of services	nil
	$5,783

No complaint has been made regarding the amount awarded for special damages. The defendant, however, has appealed against the award of $5,000 for loss of expectation of life as being excessive and the plaintiff has cross-appealed against the decision that he is not entitled to any damages for loss of his son's services.

The facts have never been seriously in dispute.

At the time of his death the deceased was a young man of 19 years of age, the same age as ordinary seaman Appleby (see *Bishop* v. *Cunard White Star Co. Ltd.* [1]). He was a pupil in the commercial class of the Anderson School at Ipoh. He was said to be of intelligence slightly above the average, to be healthy and keen on games and to be a friendly, social sort of person. At the time of his death his father was a man of just over 40 years of age who carried on some sort of business as a building contractor and looking after other people's rubber estates. The deceased helped him in this work, presumably, as he was attending school, in his spare time, and was paid "about $200 a month". It would appear that the main work done by the deceased consisted in looking after his father's stocks of building material. His father said that if he had had to employ another man to take the place of his son he would have had to pay $400 a month, but apparently he had not found it necessary to do so. According to the accountant whom he employed to make his Income Tax returns the father's income varied between $14,000 and $27,000 a year and in view of the source from which it came this evidence was unlikely to err on the high side.

In the circumstances Azmi J. came to the conclusion that the father had suffered no loss and accordingly was not entitled to damages under section 7. With respect, I entirely agree with this conclusion. After all if the father had had to employ a man at $400 a month to do what the deceased had been doing for $200, then the argument that he had suffered loss would have been tenable. But that was not what happened. What happened was that he was able to get along without anybody doing the work and presumably he did it himself or it was not done. In neither case can he claim to have suffered any pecuniary loss.

It was no doubt a source of satisfaction to him to have been assisted in his business by his own son who would ultimately inherit it, and in the loss of this satisfaction he is entitled to sympathy, but to have damages he must show actual pecuniary loss. As was said by Lord Wright in the case of *Davies* v. *Powell Duffryn Associated Collieries, Ltd.* [2]:—

> "There is no question here of what may be called sentimental damage, bereavement or pain and suffering. It is a hard matter of pounds, shillings and pence."

I would accordingly dismiss the cross-appeal.

With regard to the damages under section 8 for loss of expectation of life, Azmi J. based himself on the decision of the House of Lords in the well-known case of *Benham* v. *Gambling* [3]. That case, he pointed out, decided that damages for loss of expectation of life should not be calculated solely or mainly on the basis of the length of life that is lost; they should be fixed at a reasonable figure for the loss of some measure of prospective happiness. He went on to quote the following passage from the speech of Viscount Simon (at p. 166):—

> "The question thus resolves itself into that of fixing a reasonable figure to be paid by way of damages for the loss of a measure of prospective happiness ..... it is necessary for the Court to be satisfied that the circumstances of the individual life were calculated to lead, on balance, to a positive measure of happiness, of which the victim has been deprived by the defendant's negligence ..... The damages are in respect of loss of life, not of future pecuniary prospects."

He then observed that the deceased was "in the best of health and was a happy lad". On that he considered a sum of $5,000 to be a fair amount of damages.

For myself, I think it is now generally accepted that the case of *Benham* v. *Gambling* must be regarded in its historical context. In the case of *Flint* v. *Lovell* [4] the Court of Appeal had upheld the decision of Acton J., that a person who had suffered injuries as a result of the negligent act of another was entitled to damages for any loss of expectation of life resulting therefrom. The cause of action in that case arose in 1933. In 1934 the Law Reform (Miscellaneous Provisions) Act, 1934, came into force. Section 1 of that Act, which is the same as section 8 of our Civil Law Ordinance, provides that on the death of any person all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate. The combined effect of *Flint* v. *Lovell, supra,* and the Law Reform Act was that damages for loss of expectation of life could be recovered where the party who had suffered the damage had died as a result of the injury caused by the defendant's negligence and by virtue of section 1 of the Act the cause of action survived for the benefit of his estate.

For a period the amounts of damages awarded by the Courts under this head varied within very great limits. In *Benham* v. *Gambling*, *supra*, Asquith J., sitting without a jury had fixed the damages at £1,200 in the case of a child 2½ years old. In the case of *Rose* v. *Ford* [5], where the deceased was a young woman aged 23, the Court of Appeal had fixed the damages at £1,000 and this award was not questioned when the case later went to the House of Lords. At the other end of the scale in the case of *Shepherd* v. *Hunter* [6], a jury had awarded as little as £90 in the case of a child aged three, although it is true the Court of Appeal held this was clearly erroneous and ordered a new trial. It was in the light of this history that the case of *Benham* v. *Gambling* was approached by the House of Lords. Viscount Simon commenced his speech with the following observations (at p. 161):—

"It has been recognized by judges, who have had to deal with the many cases under this head which have fallen to be decided in the last few years, that the measurement of this head of damage in terms of money is a very difficult matter, and the House has been furnished with the assent of both parties to this appeal, with a list of cases already decided (some of them appearing in the Reports, and others available only in shorthand notes), which show how wide is the variation between the judgments of different tribunals of fact in assessing, under comparable circumstances, a suitable figure of loss under this head."

His Lordship proceeded to consider the problem and observed in the first place (at p. 165):—

"That the right conclusion is not to be reached by applying what may be called the statistical or actuarial test."

"The thing to be valued," he went on, "is not the prospect of length of days, but the prospect of a predominantly happy life." He then observed that it would be fallacious to assume that all human life is continuously an enjoyable thing, so that the shortening of it calls for compensation to be paid to the deceased's estate on a quantitative basis. "The ups and downs of life, its pains and sorrows as well as its joys and pleasures — all that makes up 'life's fitful fever' — have to be allowed for in the estimate. In assessing damages for shortening of life, therefore, such damages should not be calculated solely, or even mainly, on the basis of the length of life that is lost." He then went on, in the passage quoted by Azmi J.:—

"The question thus resolves itself into that of fixing a reasonable figure to be paid by way of damages for the loss of a measure of prospective happiness ..... it is necessary for the Court to be satisfied that the circumstances of the individual life were calculated to lead, on balance, to a positive measure of happiness, of which the victim has been deprived by the defendant's negligence ..... The damages are in respect of loss of life, not of future pecuniary prospects."

He ended by observing (at p. 168):—

"These considerations lead me to the conclusion that in assessing damages under this head, whether in the case of a child or an adult, very moderate figures should be chosen."

The last sentence of his speech reads as follows:—

"I trust that the views of this House, expressed in dealing with the present appeal, may help to set a lower standard of measurement than has hitherto prevailed for what is in fact incapable of being measured in coin of the realm with any approach to real accuracy."

With great respect I would express the view that that case may be regarded as establishing three things. The first is that loss of expectation of life in so far as it is a loss must be regarded as mainly consisting in loss of happiness and happiness is something that is incapable of measurement or evaluation in terms of money. The second is that having regard to the fundamental human decencies any compensation which is given in this connection should be moderate. The third is that the case is a clear invitation by the House of Lords to Courts trying the issue to forego the exercise to the ordinary extent of their discretion and accept some sort of conventional measure of damages. This invitation has been accepted by the Courts in England where, since 1941, damages under this head have varied from a minimum of £100 to a maximum of £500 as shown in the table in *Bingham's Motor Claims Cases* (4th Ed. p. 428). The latest reported case is that of *Wise* v. *Kaye* [7] where Sellers L.J. refers (at p. 101) to an award of £400 for loss of expectation of life as bearing "reference to the conventional figure, as it has become, under the decision of the House of Lords in *Benham* v. *Gambling*".

Here and in Singapore the amounts awarded in the past have varied from $1,000 to $3,500.

In the present case it has been argued for the appellant that the amount of $5,000 awarded by Azmi J. is in excess of anything that has ever been awarded either in England or in this country under this head. We have been urged in particular to express the view of this Court as to whether that figure or some lesser figure should be generally accepted.

Now, in one sense it is impossible to say that $5,000 is excessive as an estimate of the money value of what the deceased has lost in happiness during the years that probably lay ahead of him had he not met his untimely death. It would be equally impossible to say that $500,000 would have been excessive. On the other hand it would be just as difficult to say that $50 would have been inadequate. We can calculate the probable number of years that have been lost from the cold columns of the bills of mortality. But what is the value of each year? What is the sum total of joy? What is the sum total of sorrow? What is the balance to be struck between them? What strange spiritual currency would be required to evaluate the blessedness of Paradise or the sorrow of this earthly Vale of Tears?

Such questions clearly cannot be left to be decided by the exercise of judicial discretion in the ordinary way, for even the wisest of Judges cannot exercise his discretion when there are no

materials upon which to exercise it. The only answer lies in some sort of judicial legislation and for myself, bearing in mind the insuperable difficulties which are peculiar to this class of case, I would say that in this country at the present time this Court should express the view that the conventional figure in the case of a young adult should be $3,000 and that view should be accepted by Judges.

I would, accordingly, allow the appeal and reduce the damages awarded under section 8 from $5,000 to $3,000.

The appellant should have the costs of the appeal. In view of what was said at the hearing it is for him to say whether or not he will enforce that order.

Hill J.A.: I have read the judgment of the learned Chief Justice and I agree that the appeal should be allowed and the damages under section 8 reduced from $5,000 to $3,000.

In awarding damages for loss of expectation of life it is impossible for the courts to apply principles of common sense and jurisprudence and I wholly agree with the learned President that some sort of conventional measure of damages should be accepted by the courts and that in the case of a young adult that conventional figure in this country at the present time should be $3,000.

I agree with the order regarding costs. The deposit should be paid out to the appellant.

Good J.A.: I also have had the benefit of reading the judgment which has just been delivered by my Lord the Chief Justice with which I am in complete agreement.

There is no fiction more fictional, no paradox more paradoxical, than that which is embodied in the doctrine which provides for the payment of damages for loss of expectation of life. On the one hand it is universally recognized that the balance of enjoyment which a person might have hoped to derive from the ups and downs of life is incapable of being expressed in terms of money. On the other hand it has been laid down as a matter of law, partly by statute and partly by judicial authority that the estate of a person deprived of his life by another's negligent act is entitled to compensation for the loss of something which, it is agreed, is incapable of measurement, and such compensation can only be paid in the form of money. What then, is a judge, faced with these two contradictory propositions, to do?

The curve of the graph representing damages in these cases, after some fairly striking undulations, has settled down in the low hundreds. The only course for a judge to take is to follow the results of the opinions of the House of Lords and the Court of Appeal in England which have had the effect of stabilizing the damages in cases of this kind within what their Lordships themselves concede are conventional limits.

For these reasons I, too, would allow the appeal to the extent of reducing the damages awarded under section 8 from $5,000 to $3,000. I would dismiss the cross-appeal and I agree with what the learned Chief Justice has said as to costs.

Appeal allowed.
Cross-appeal dismissed.

Solicitors: *Battenberg & Talma; Gibb & Co.*

TAN CHENG QUEE & ANOR. v. SAY HOR KEE

[O.C.J. (Hashim J.) April 18, 1962]

[Kuantan — Motion No. 3 of 1962]

Mining Enactment (Cap. 147), ss.97(ii) and 99(i) — Application by stranger to be added as party under O.16 r.12 — Whether Warden has power to add stranger as party under s.99(i) — Whether Court has power to do so.

Practice and Procedure — Adding of party — Application by stranger — R.S.C., O.16 r.12.

The complainant was the registered lessee of a mining lease in Kuala Kuantan which he bought from the Siamese Tin Syndicate (Malaya) Ltd. on August 14, 1961. The respondent was the registered sub-lessee of the mining lease, which sub-lease was registered in his personal name on January 18, 1960. On August 19, 1961 the complainant filed a complaint under section 97(ii) of the Mining Enactment before the Inspector of Mines, Pahang, calling upon the sub-lessee to show cause why the sub-lease should not be cancelled for failing to work the land for a period of 6 months. On September 20, 1961 the Senior Inspector of Mines ordered that the application be transferred to the High Court under section 101 of the Mining Enactment. On March 10, 1962 the Lee Shang Mining Co. filed a Motion under O.16 r.12 that the company be added as a respondent in respect of the application under section 99(i) of the Mining Enactment.

Held: (1) under section 99(i) of the Mining Enactment the Warden shall issue a summons to the parties registered as lessee or sub-lessee and nobody else. The Warden shall also notify and call all persons whose interests may, in his opinion, be affected by such enquiry. But there is nothing in the section which empowers the Warden to add any other person as a party to the enquiry;

(2) the Court has no jurisdiction to add any person or company who has no legal title to the lease or sub-lease as an additional respondent.

Cases referred to:—

(1) *Moser* v. *Marsden* [1892] 1 Ch. 487.
(2) *Gardner* v. *Siau Kuan Chia* (1912) Innes 159, C.A.; (1907-35) F.M.S. Willan's Digest of Reported Cases, 137.
(3) *Atid Navigation Co. Ltd.* v. *Fairplay Towage & Shipping Co. Ltd.* [1955] 1 W.L.R. 336.

MOTION.

T. C. Tang for the applicant.
M. Edgar for the claimant.
Respondent not represented.

Cur. Adv. Vult.

Hashim J.: This is a Motion under O.16 r.12. In my opinion it is rather an unusual Motion. Normally a party to a suit makes an